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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85390; File No. SR-NYSE-2019-13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List to Permit Affiliated Member Organizations that are Supplemental Liquidity Providers on the Exchange to Obtain the Most Favorable Rate in Securities Traded Pursuant to Unlisted Trading Privileges

March 21, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on March 19, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) permit affiliated member organizations that are Supplemental Liquidity Providers (“SLPs”) on the Exchange to obtain the most favorable rate in securities traded pursuant to Unlisted Trading Privileges (“UTP”) (Tapes B and C) when (a) at least one affiliate satisfies the quoting requirements for SLPs in assigned

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

securities, and (b) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates; (2) modify the quoting requirements for SLP tiered rates for displayed and non-displayed orders in UTP securities; and (3) clarify that the combined SLP quoting requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization. The Exchange proposes to implement these changes to its Price List effective March 19, 2019.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate in UTP securities when (a) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities,

⁴ The Exchange originally filed to amend the Price List on February 28, 2019 (SR-NYSE-2019-10). On March 11, 2019, SR-NYSE-2019-10 was withdrawn and replaced by SR-NYSE-2019-12. SR-NYSE-2019-12 was subsequently withdrawn and replaced by this filing.

and (b) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates; (2) modify the quoting requirements for SLP tiered rates for displayed and non-displayed orders in UTP securities; and (3) clarify that the combined SLP quoting requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization.

The Exchange proposes to implement these changes to its Price List effective March 19, 2019

Proposed Rule Change

Background

SLPs in UTP securities are eligible for certain credits and fees for displayed and non-displayed orders that add liquidity to the Exchange in UTP Securities priced at or above \$1.00. The amount of the credit is currently determined by the "tier" for which the SLP qualifies, which is based on the SLP's level of quoting and ADV of liquidity added by the SLP in assigned UTP securities.

Currently, for displayed orders in UTP Securities that add liquidity to the Exchange, the Exchange offers a non-tiered credit of \$0.0026 per share per tape in an assigned UTP Security where the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B.⁵ For non-displayed orders in UTP Securities that add liquidity to the Exchange, the Exchange offers a non-tiered credit of \$0.0008 per share per tape in an assigned UTP Security if the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B.

⁵ Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization ("SLP-Prop") or a registered market maker at the Exchange ("SLMM").

Current Tier 2 provides a \$0.0029 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.03% per tape, and quotes on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement in 200 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (2) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B. Tier 2 also provides a \$0.0011 per share credit per tape in assigned UTP securities for SLPs adding non-displayed liquidity to the Exchange if the SLP meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

Current Tier 1 provides a \$0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% for Tape B and 0.075% for Tape C, and (2) quotes on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement in 400 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B. Tier 1 also provides a \$0.0014 per share credit per tape for SLPs adding non-displayed liquidity to the Exchange, and a \$0.0025 per share credit for MPL Orders adding liquidity, in an assigned UTP Security if the SLP meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

Finally, the current Tape A Tier provides a \$0.00005 per share in assigned UTP securities in addition to the Tape A SLP credit in Tape A assigned securities for SLPs adding displayed liquidity to the Exchange if the SLP (1) qualifies for the SLP Tier 1 provide rate in both Tape B and C or quotes on an average daily basis, calculated monthly, in excess of the 10% average

quoting requirement in 300 or more assigned securities separately in Tapes B and Tape C pursuant to Rule 107B, and (2) where the SLP meets the 10% average quoting requirement pursuant to Rule 107B.

Most Favorable Rate for Affiliated SLPs

The Exchange proposes to amend the Price List to permit affiliated member organizations that are SLPs to obtain the most favorable rate in UTP securities when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates (i.e., SLP Provide Tier 2 and SLP Provide Tier 1).

To effect this change, the Exchange proposes to add a footnote stating that affiliated member organizations that are SLPs would be eligible for the most favorable rate for any such security traded in an applicable month provided that one or both affiliated member organizations request and are approved for aggregation of eligible activity pursuant to the requirements set forth in the Price List when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered rates (i.e., SLP Provide Tier 2 and SLP Provide Tier 1).

In order to qualify as affiliates for purposes of obtaining the more favorable rate and aggregating the adding liquidity of an ADV volumes for UTP securities, one or both member organizations that are SLPs would be required to follow the procedures set forth in the Price List for requesting that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.⁶

⁶ For purposes of applying any provision of the Exchange's Price List where the charge assessed, or credit provided, by the Exchange depends on the volume of a member organization's activity, a member organization may request that the Exchange aggregate

For example, assume a member organization with a SLP (SLP1) is affiliated with another member organization that also has a SLP (SLP2). Both SLP1 and SLP2 meet the quoting requirement in 500 securities each. If the adding liquidity for all for assigned Tape B SLP securities is 0.08% of Tape B CADV for SLP1 in the billing month and 0.06% of Tape B CADV for SLP2 in the billing month, the combined adding liquidity for SLP1 and SLP2 would be 0.14% of Tape B CADV, and both SLP1 and SLP2 would meet the 0.10% Tape B CADV adding requirement for Tape B Tier 1.

If in that same billing month, SLP1 has 8.0% quoting in SLP symbol XYZ and SLP2 has 12.0% quoting in that same symbol XYZ, both SLP1 and SLP2 would qualify for the SLP Tier 1 credit of \$0.0032 in symbol XYZ because of SLP2's 12.0% quoting and the combined adding liquidity of SLP1 and SLP 2 of 0.14% of Tape B CADV. If SLP2 did not quote in symbol XYZ at least 10%, then SLP1 would not qualify for the SLP Tier 2 credit because the 8.0% quoting was below the 10% requirement, and SLP1 and SLP2 would instead receive the applicable non-tier, Non-SLP Tier 1 adding credit, or non-SLP Tier 2 adding credit.

Quoting Requirement for SLP Tiered Credits

As noted above, the quoting requirement for SLP tiered credits (Tier 2, Tier 1 and Tape A Tier) is on an average daily basis, calculated monthly. In each case, the Exchange proposes to clarify that the quoting requirement would not be on an average daily basis, calculated monthly. To effectuate this change, the Exchange proposes to delete the phrase “, on an average daily basis,” after “quotes” in Tier 2, Tier 1 and the Tape A Tier.

its eligible activity with activity of such member organization's affiliates. A member organization requesting aggregation of eligible affiliate activity is required to (1) certify to the Exchange the affiliate status of member organizations whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate.

For example, if a SLP quotes 6.0% quoting in SLP symbol XYZ, a Tape B or Tape C security, on day 1 of the billing month, 12.0% on day 2, and 18.0% on day 3, that SLP would have an average quoting of 12.0% for the month after day 3 in symbol XYZ. Further assume that the SLP averaged the same quoting in at least 399 other Tape B and Tape C securities for that month. As a result, the SLP would have met the 400 symbol quoting requirement for SLP Tier 1 in Tape B and Tape C combined.

Combined Quoting Requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP Securities

As noted above, current Tier 2, Tier 1 and the Tape A Tier require SLPs adding displayed liquidity to the Exchange to quote on an average daily basis, calculated monthly, in excess of the 10% average quoting requirement for a specified number of assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B.

The Exchange proposes to add a footnote after the word “combined” in Tier 2 and Tier 1 that would clarify that the combined SLP quoting requirement for those two tiers includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization. The footnote would also clarify that individual securities quoted by both an SLP-Prop and an SLMM are only counted once. In the above example, for instance, further assume an SLP meets the 10% quoting requirement in 350 securities in Tape B and Tape C and an affiliated SLP meets the requirement in 100 securities in Tape B and Tape C, 25 of which are the same as the first SLP. The total combined unique securities across the affiliated SLPs would be 425, or 350 plus 75, meeting the securities quoting for SLP Tier 1 in Tape B and Tape C combined for both affiliated SLPs.

Finally, the Exchange proposes to add the word “combined” following “Tapes B and C” and before “pursuant to Rule 107B” in the Tape A Tier which was inadvertently omitted and add the same footnote to the Tape A Tier.

The Exchange believes that these changes will add greater specificity and clarity to the Exchange’s Price List.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Most Favorable Rate for Affiliated SLPs

The Exchange believes that the proposed rule change is reasonable because the SLP Provide Tier rates for UTP securities, established in previous rule filings, would remain the same.⁹ The Exchange further believes that the proposed rule change is equitable because it establishes a manner for the Exchange to treat affiliated member organizations that are approved as SLPs for purposes of assessing charges or credits that are based on volume. The provision is

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) & (5).

⁹ See, e.g., Securities Exchange Act Release No.84583 (November 14, 2018), 83 FR 58637 (November 20, 2018) (SR-NYSE-2018-53), for the most recent pricing changes applicable to SLPs in UTP securities.

also equitable because all member organizations seeking to aggregate their activity are subject to the same parameters, in accordance with established procedures set forth on the Price List regarding aggregation across affiliated member organizations. The Exchange further believes that the proposal is not unfairly discriminatory because it would serve to reduce disparity of treatment between member organizations with regard to the pricing of different services and reduce any potential for confusion on how SLP activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of member organizations that have divided their various business activities between separate corporate entities as compared to member organizations that operate those business activities within a single corporate entity. The Exchange further believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it aligns how affiliated member organizations that are approved as SLPs may aggregate volume in the same manner that affiliated member organizations currently aggregate non-SLP trading volume.

Quoting Requirement for SLP Tiered Credits

The Exchange believes that removing language that specifies that the quoting requirement for SLP tiered credits (Tier 2, Tier 1 and Tape A Tier) are on an average daily basis calculated monthly would provide for a simpler approach to calculating the quoting requirement and provide greater clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Combined Quoting Requirement for SLP Tier 2, Tier 1 and the Tape A Tier in UTP Securities

The Exchange believes that adding the inadvertently omitted word “combined” to SLP Tier A and a footnote to SLP Tier 2, Tier 1 and the Tape A Tier clarifying that the combined

SLP quoting requirement for those tiers in UTP securities includes shares and assigned securities of both an SLP-Prop and an SLMM of the same or an affiliated member organization and that individual securities quoted by both an SLP-Prop and an SLMM are only counted once would provide greater clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Adding the proposed clarity to the Price List also reduces potential confusion and adds transparency to the Exchange's rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change is designed to encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

¹⁰ 15 U.S.C. 78f(b)(8).

Further, the Exchange does not believe that the proposal to permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate in UTP securities would impose an undue burden on intra-market competition because all member organizations may qualify as an SLP. The Exchange notes that the Price List permits aggregation of activity for eligible affiliates of any member organization. Further, the Exchange believes that permitting member organizations that divided their various business activities between separate corporate entities to qualify for aggregation and receive the same treatment as a member organization that operates its business activities within a single corporate entity would encourage competition and the submission of additional liquidity to a public exchange. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will

impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-13 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSE-2019-13 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,
Deputy Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).

